

08:14 1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE WESTERN DISTRICT OF TEXAS  
3 WACO DIVISION

4 ACQIS LLC \*  
5 VS. \* March 22, 2024  
6 ASUSTEK COMPUTER, INC. \*  
7 ASUS GLOBAL PTE. LTD. \*

8 BEFORE THE HONORABLE ALAN D ALBRIGHT  
9 JURY TRIAL PROCEEDINGS  
10 Volume 5 of 5

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5 Proceedings recorded by mechanical stenography,  
6 transcript produced by computer-aided transcription.

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10:23 1 (Hearing begins.)

10:23 2 THE COURT: Jury Note No. 3: In simple

10:23 3 terms, what is the difference between direct and

10:23 4 indirect infringement? The word "induce" is confusing

10:24 5 to us.

10:24 6 I am responding: Ladies and gentlemen,

10:24 7 you have the Court's instructions on the law which

10:24 8 explain these terms. Please continue to deliberate.

10:26 9 (Recess taken.)

11:32 10 THE COURT: What's up?

11:32 11 MR. TAMKIN: Your Honor, in looking at

11:32 12 the jury verdict form, we've noticed a potential

11:32 13 mistake in the instructions part of it, which is at the

11:32 14 end of the alter ego section, there is a question that

11:32 15 says if you answer no to all the alter ego questions,

11:32 16 go to the end and you're done.

11:32 17 However, if the jury finds infringement

11:32 18 for ASGL, then there would still need to be questions

11:32 19 on notice, damages, et cetera.

11:32 20 So right now I have no idea where the

11:32 21 jury's going to come out on any of this, obviously. It

11:32 22 may not be an issue that comes up at all, but

11:32 23 theoretically, the jury could answer infringement or

11:32 24 indirect infringement for ASGL, answer no for agency or

11:32 25 alter ego and then be done.

11:33 1 At that point we would -- that would be  
11:33 2 an unusual situation where we would think the approach  
11:33 3 would have to be that the jury still needs to answer  
11:33 4 those questions with respect to ASGL, and we'd need to  
11:33 5 ask them to do that.

11:33 6 Another alternative would be to, you  
11:33 7 know, pull out that instruction page from the verdict  
11:33 8 form. I don't know that that's necessary at this time,  
11:33 9 but I wanted to at least raise this with the Court when  
11:33 10 we spotted this -- this probably error in the  
11:33 11 instruction -- in the instructions part of the verdict  
11:33 12 form.

11:33 13 THE COURT: A lesser person -- not me,  
11:33 14 but a lesser person would point out that I told you all  
11:33 15 that -- to be very careful with the verdict form  
11:33 16 because I don't go over the verdict form after the  
11:33 17 charge conference. And so if there's a problem with  
11:33 18 it, it's really bad if it surfaces once the jury has  
11:33 19 it. So I wouldn't say that. Only someone -- a lesser  
11:34 20 person would say it.

11:34 21 So what is your suggestion?

11:34 22 MR. TAMKIN: I think we should just pull  
11:34 23 it out now.

11:34 24 THE COURT: Pull out --

11:34 25 MR. TAMKIN: Pull out the instruction,

11:34 1 say that instruction that follows -- it's on Page 6 --  
11:34 2 should -- was inadvertent and shouldn't be there.

11:34 3 THE COURT: And the response from the  
11:34 4 defendant?

11:34 5 MR. BURESH: Your Honor, I'm trying to --  
11:34 6 I'm not 100 percent convinced whether there's an error  
11:34 7 on this or not. Honestly, I'm trying to process it.

11:34 8 But regardless, I don't think you can  
11:34 9 pull the verdict form that you've already given to the  
11:34 10 jury out of the jury room. It's -- they're in  
11:34 11 deliberations. So I think the chips have to fall where  
11:34 12 they are at this point.

11:34 13 THE COURT: So let me put on the record.  
11:34 14 I have -- in one time in the past, when the -- when one  
11:34 15 of the parties prepared the verdict form for the jury,  
11:34 16 they failed to include a portion of it that everyone  
11:35 17 agreed should be in there, and so we added that.  
11:35 18 That's another thing.

11:35 19 But the jury's now been deliberating for  
11:35 20 six hourish. And they have the jury form. On top of  
11:35 21 that, we know from their question, they're already  
11:35 22 having a hard time with it.

11:35 23 So I'm just -- I'm not going to do  
11:35 24 anything. They have the form they have. I think to go  
11:35 25 in and interlineate or pull a page or do whatever would

11:35 1 only make whatever the situation is worse. And so  
11:35 2 we're stuck with the verdict form we have.

11:35 3 So that's what we're going to do. That's  
11:35 4 what I'm going to do. If you'd like to put an  
11:35 5 objection on the record to me doing that, that's  
11:35 6 obviously your right. I think you've made the record  
11:35 7 of what you'd like to do. And so -- and I'm denying  
11:35 8 that request.

11:36 9 If there's anything else you want to add  
11:36 10 to protect your record -- I don't give advice on how to  
11:36 11 protect your record. I'll give you whatever  
11:36 12 opportunity you want. I just don't know --

11:36 13 MR. TAMKIN: There is something I would  
11:36 14 like to put on the record, Your Honor, which is this  
11:36 15 problem can be solved another way if in the situation  
11:36 16 comes out where there's infringement, direct or  
11:36 17 indirect, by ASGL and the jury doesn't answer the  
11:36 18 remaining questions, that would be an error.

11:36 19 At that point in time, I believe the  
11:36 20 Court can give -- can send the jury back to answer the  
11:36 21 remaining questions, and I would request that the Court  
11:36 22 do that. But that's --

11:36 23 THE COURT: Well, if that happens, let's  
11:36 24 take it up.

11:36 25 MR. TAMKIN: Fair.

11:36 1 THE COURT: If that happens and  
11:36 2 they're -- then I'll take it up. We'll have to figure  
11:36 3 out what to do.

11:36 4 MR. TAMKIN: And I just wanted really to  
11:36 5 alert the Court to that issue.

11:36 6 THE COURT: Thank you. I think that's  
11:36 7 fair.

11:36 8 Anything else?

11:36 9 MR. BURESH: Nothing here, Your Honor.

11:36 10 THE COURT: Okay. They've ordered lunch.  
11:37 11 So I'm going to go out to lunch. I'll probably be gone  
11:37 12 from 12:00 to 1:00.

11:37 13 You all are free to be gone because I'm  
11:37 14 not going to be here to answer any notes, if they have  
11:37 15 any. And so -- and I will probably let them know that  
11:37 16 I'm not going to be here for that hour. And we'll be  
11:37 17 back around 1:00 or 1:15.

11:37 18 So I've got a hearing I'm doing right now  
11:37 19 and so --

11:37 20 (Off-the-record discussion.)

11:38 21 (Recess taken.)

03:36 22 THE COURT: I have received Jury Note 5,  
03:36 23 which asks: What exhibit shows ASUSTeK's U.S. profit  
03:36 24 for May 2018 to 2020 in U.S. dollars?

03:36 25 Let me start by asking the plaintiff: Is

03:36 1 there a specific document that shows that?

03:36 2 MR. COLLARD: There's a specific document  
03:36 3 that shows U.S. profit, but I...

03:36 4 THE COURT: For ASUSTeK?

03:36 5 MR. COLLARD: Yes.

03:37 6 MR. TAMKIN: If you just give us one  
03:37 7 second, Your Honor, we're just looking up those -- the  
03:37 8 document number.

03:37 9 MS. AMSTUTZ: I believe I know them, but  
03:37 10 let me just double-check.

03:39 11 THE COURT: Is there --

03:39 12 MR. COLLARD: There is. It's across four  
03:39 13 exhibits, Your Honor. It's not all in one exhibit.  
03:39 14 It's the annual reports, the consolidated financials,  
03:39 15 and then the spreadsheet for things specific to this  
03:39 16 case.

03:39 17 THE COURT: It's in those and -- why  
03:40 18 don't you come up to the podium, both lawyers come to  
03:40 19 the podium so we make sure, please.

03:40 20 So is it in a manner where I could  
03:40 21 reference them to exhibits and they would have to find  
03:40 22 the information from those exhibits?

03:40 23 MR. COLLARD: Yes, Your Honor.

03:40 24 THE COURT: Okay. And what is the  
03:40 25 defendants' position?

03:40 1 MR. BURESH: The annual reports shouldn't  
03:40 2 be listed in this exercise. They are overall company  
03:40 3 profits and aren't tied to the accused products. So  
03:40 4 would, in my opinion, overinflate the exercise that the  
03:40 5 jury's conducting at this point.

03:40 6 THE COURT: Did the plaintiff's damages  
03:40 7 expert make clear which profits he was relying on in  
03:40 8 his testimony? In other words, did he distinguish  
03:40 9 between -- what defense counsel's concerned about is  
03:40 10 the global profits of ASUSTeK, right?

03:40 11 MR. COLLARD: May I have one second?

03:40 12 THE COURT: Uh-huh.

03:40 13 MR. BURESH: That is what I'm concerned  
03:41 14 about.

03:41 15 MR. COLLARD: Your Honor, in that case,  
03:41 16 the answer is J-18, which was the sales spreadsheet  
03:41 17 that was created specifically for this, broken out by  
03:41 18 time period, that was the basis of the damages report.

03:41 19 THE COURT: Did it show what the U.S.  
03:41 20 profit was?

03:41 21 MR. COLLARD: Yes.

03:41 22 (Brief off-the-record discussion.)

03:41 23 MR. COLLARD: I think it's the sales.  
03:41 24 I'd have to look to know if it's sales or profits, Your  
03:41 25 Honor.

03:41 1 THE COURT: Here's what my sense is, is  
03:41 2 the answer is: There's nothing that provides to them  
03:41 3 with specificity -- I mean, you may have --

03:41 4 MR. COLLARD: May I check J-18?

03:41 5 THE COURT: No, you're welcome to check.  
03:41 6 But my sense -- unless you have -- I'm not sure I'm  
03:41 7 going to give it, but I'd like to know if there's  
03:41 8 something that your expert relied on that showed what  
03:41 9 the U.S. profit was.

03:41 10 Was the U.S. profit not the base that the  
03:41 11 damages person worked off of?

03:41 12 MR. COLLARD: He didn't work off profit,  
03:41 13 Your Honor. He worked off of --

03:41 14 THE COURT: Sales?

03:41 15 MR. COLLARD: -- sales revenue.

03:41 16 THE COURT: Okay. Well, if all he talked  
03:41 17 about is sales, I'm not going to do that. So if you  
03:42 18 have something that answers their question with respect  
03:42 19 to what the profit was, if you'll let me know that.

03:42 20 MR. COLLARD: We will check that J-18  
03:42 21 right now.

03:42 22 THE COURT: And I haven't decided to give  
03:42 23 it to them. I just need to know if there's something.

03:42 24 MR. COLLARD: Understood.

25 (Brief off-the-record discussion.)

03:42 1 MR. COLLARD: Your Honor, it does have  
03:42 2 profit. It has cost of goods sold and it has revenue,  
03:42 3 which would -- used to create profit for that time  
03:43 4 period, J-18.

03:43 5 THE COURT: But does it set forth what  
03:43 6 the profit is? I mean, I get what you're telling me is  
03:43 7 it has the information in which they could discern what  
03:43 8 the profit is, at least.

03:43 9 MR. COLLARD: That's what I'm -- yes.  
03:43 10 That's what I'm telling you.

03:43 11 THE COURT: Okay. Now, what is the  
03:43 12 defendants' position with regard to me referencing that  
03:43 13 document for the jury?

03:43 14 MR. BURESH: An additional concern, Your  
03:43 15 Honor, is that that is sales --

03:43 16 THE COURT: I just need yes or no. I  
03:43 17 mean --

03:43 18 MR. BURESH: Well, no. Because that's  
03:43 19 sales information of ACI. It's not sales information  
03:43 20 of ASUSTeK. So there's that additional problem.

03:43 21 THE COURT: So now, here's our problem.  
03:43 22 Generally speaking. I have to leave today somewhere  
03:43 23 between 4:30 and 4:45. And the jury's going to have to  
03:43 24 leave as well. We have no judges here besides me.

03:43 25 Now, on Monday, I have court in Austin.

03:43 1 I won't be back. Judge Gilliland will be here to take  
03:44 2 the verdict. So I'm not going to give this. I thought  
03:44 3 maybe if we had something, it would just speed things  
03:44 4 along. But that's fine. We don't.

03:44 5 Do you want me to let them know that  
03:44 6 they're going home at 4:30 now, or do you want me to  
03:44 7 not let them know and around 4:30 tell them they're  
03:44 8 going home and coming back Monday?

03:44 9 MR. COLLARD: We think there's nothing  
03:44 10 wrong with letting them know what the plan is.

03:44 11 MR. BURESH: We agree.

03:44 12 THE COURT: Okay. That was what I --

03:44 13 MR. BURESH: Get us out of here, Judge.

03:44 14 THE COURT: I've been sitting here too.

03:44 15 (Laughter.)

03:44 16 THE COURT: This may surprise you, but  
03:44 17 I'm not paid by the hour. And so -- not that that  
03:44 18 takes away the pain. I'm just saying that I'm here,  
03:44 19 you know.

03:44 20 Now, I've got these wonderful clerks, the  
03:44 21 greatest court reporter in the world, deputy clerk and  
03:44 22 all that, and we all just kind of sit in the back and,  
03:45 23 you know, sing hymns and do things together to pass the  
03:45 24 time, but I'm equally ready to get home, so...

03:45 25 MR. BURESH: Okay.

03:45 1 THE COURT: So I'm going to say: Ladies  
03:45 2 and gentlemen of the jury, you have all the exhibits.  
03:45 3 Let me write it down and I'll read it to  
03:45 4 you, but that's essentially what I'm going to say.  
03:45 5 I'm going to get a stamp that says  
03:46 6 essentially this so I don't have to write it.  
03:46 7 MR. COLLARD: Your Honor, before you read  
03:46 8 that, do you mind reading the note one more time again  
03:46 9 so I can hear it?  
03:46 10 THE COURT: Sure. What exhibit shows  
03:46 11 ASUSTeK's U.S. profits from May 2018 to 2020 in U.S.  
03:46 12 dollars?  
03:46 13 MR. COLLARD: Thank you.  
03:46 14 THE COURT: What I'm responding is:  
03:46 15 Ladies and gentlemen, you have all of the exhibits  
03:46 16 admitted at trial. Please reference these in your  
03:46 17 deliberations.  
03:46 18 MR. BURESH: Fair enough from defendants'  
03:46 19 perspective, Your Honor.  
03:46 20 MR. COLLARD: No objection, Your Honor.  
03:46 21 (Recess taken.)  
04:29 22 THE COURT: Please remain standing for  
04:29 23 the jury.  
04:30 24 THE BAILIFF: All rise.  
04:30 25 (Jury entered the courtroom.)

04:30 1 THE COURT: Thank you. You may be  
04:30 2 seated.

04:30 3 Ms. Johnson, it's my understanding you  
04:30 4 are the foreperson?

04:30 5 THE FOREPERSON: Yes.

04:30 6 THE COURT: Do you have a verdict?

04:30 7 THE FOREPERSON: Yes.

04:30 8 THE COURT: Would you hand it to --

04:30 9 (Off-the-record discussion.)

04:30 10 THE COURT: Okay. I'm going to ask the  
04:30 11 jury to please listen carefully as I read the verdict  
04:30 12 because at the end, I'm going to ask each of you to  
04:30 13 stand if -- to endorse the verdict if it is your  
04:30 14 verdict.

04:31 15 With respect to Question No. 1: Did  
04:31 16 plaintiff prove by a preponderance of the evidence that  
04:31 17 ASGL directly infringed the following asserted claims?

04:31 18 With respect to '768 patent, Claim 10:  
04:31 19 Yes.

04:31 20 Claim 13: Yes.

04:31 21 '359 patent, Claim 19: Yes.

04:31 22 With respect to the question: Did  
04:31 23 plaintiff prove by a preponderance of the evidence ACI  
04:31 24 directly infringed the following asserted claims?

04:31 25 With respect to the '768 patent, Claim 10

04:31 1 is yes.

04:31 2 Claim 13 is yes.

04:31 3 The '359 patent, the Claim 19 is yes.

04:31 4 Turning to Page 2.

04:31 5 With regard to Question 2: Did plaintiff

04:31 6 prove by a preponderance of the evidence that ASUSTeK

04:31 7 induced infringement of the following asserted claims?

04:31 8 With respect to the '768 patent, Claim

04:31 9 10, the answer is no.

04:31 10 With respect to Claim 13, the answer is

04:31 11 no.

04:31 12 With respect to the '359 patent, Claim

04:31 13 19, the answer is no.

04:32 14 Question 2B: Did plaintiff prove by a

04:32 15 preponderance of the evidence that ASGL induced

04:32 16 infringement of the following asserted claims?

04:32 17 With respect to the '768 patent, the

04:32 18 answer to Claim 10 is no.

04:32 19 Claim 13 is no.

04:32 20 The '359 patent, Claim 19 is no.

04:32 21 With respect to the question on alter

04:32 22 ego, Question No. 3A: Did plaintiff prove by a

04:32 23 preponderance of the evidence that ASUSTeK is liable

04:32 24 for the actions of ASGL?

04:32 25 The answer is yes.

04:32 1 Did plaintiff prove by a preponderance of  
04:32 2 the evidence that ASUSTeK is liable for the actions of  
04:32 3 ACI?

04:32 4 The answer is yes.

04:32 5 Did plaintiff prove by a preponderance of  
04:32 6 the evidence that ASGL is liable for the actions of  
04:32 7 ACI?

04:32 8 The answer is yes.

04:32 9 Question No. 4: Did plaintiff prove by a  
04:32 10 preponderance of the evidence that it provided ASUSTeK  
04:32 11 notice of the '768 and '359 patents and specific charge  
04:33 12 of infringement of the same by a specific product prior  
04:33 13 to May 12th, 2020?

04:33 14 The answer is yes.

04:33 15 Question 4B: Did plaintiff prove by a  
04:33 16 preponderance of the evidence that it provided ASGL  
04:33 17 notice of the '768 and '359 patents and a specific  
04:33 18 charge of infringement of the same by a specific  
04:33 19 product prior to May 12th, 2020?

04:33 20 The answer is no.

04:33 21 With regard to invalidity, Question 5:  
04:33 22 Did ASUSTeK and ASGL prove by clear and convincing  
04:33 23 evidence that the following asserted claims are invalid  
04:33 24 because they lack an adequate written description?

04:33 25 With respect to the '768 patent, with

04:33 1 respect to both Claims 10 and 13: No.

04:33 2 With regard to '359, the answer is no.

04:33 3 Question 5B: Did ASUSTeK and ASGL prove

04:33 4 by clear and convincing evidence the following asserted

04:33 5 claims are invalid because they are not enabled?

04:34 6 With respect to the '768 patent, both

04:34 7 Claim 10 and 13, the answer is no.

04:34 8 With regard to the '359 patent, the

04:34 9 answer is no.

04:34 10 Turning to the damages question.

04:34 11 Question No. 6, 6A: What amount of

04:34 12 damages do you find that plaintiff has proven by a

04:34 13 preponderance of the evidence would compensate

04:34 14 plaintiff for infringement of the claims that you have

04:34 15 found are infringed and not invalid?

04:34 16 The answer is \$17,970,582.

04:34 17 With regard to the question of willful

04:34 18 infringement: Did plaintiff prove by a preponderance

04:34 19 of the evidence that defendants willfully infringed any

04:34 20 of the following asserted patents?

04:34 21 With regard to the '768 patent, the

04:34 22 answer is no.

04:34 23 With regard to the '359 patent, the

04:34 24 answer is no.

04:34 25 Turning to the final page, it is signed

04:34 1 by Ms. Johnson and dated today's date.

04:34 2 Ladies and gentlemen of the jury, if you  
04:35 3 agree with the verdict as I read it, would you please  
04:35 4 stand at this time?

5 Thank you. You may be seated.

04:35 6 The record will reflect all seven jurors  
04:35 7 stood.

04:35 8 Okay. First of all, let me thank you all  
04:35 9 for your hard work. Both listening to the evidence, of  
04:35 10 course, and also in your deliberations. The lawyers  
04:35 11 and the parties don't get a chance to thank you, so I  
04:35 12 will thank you on their behalf.

04:35 13 I've given you several instructions  
04:35 14 during the course of the trial about your conduct. Let  
04:35 15 me go through each of those.

04:35 16 First, with respect to talking about your  
04:35 17 service, you can talk about your service. It's  
04:35 18 America. With two exceptions.

04:35 19 One is, you were allowed to see certain  
04:35 20 confidential evidence, sales information and other to  
04:36 21 help you. I would ask that you keep anything you heard  
04:36 22 that we cleared the courtroom for, I would ask you to  
04:36 23 keep that confidential.

04:36 24 And second, I think I told you before you  
04:36 25 began your deliberations, please don't discuss what you

04:36 1 all talked about during your deliberations. Those  
04:36 2 should remain secret from the public.

04:36 3 The parties and their lawyers do not have  
04:36 4 the opportunity to speak to you. And so they won't be  
04:36 5 reaching out, but you can speak to anyone else that you  
04:36 6 care to about the case.

04:36 7 Number two, doing research. I can  
04:36 8 imagine you can't wait to get home and do research  
04:36 9 about the plaintiff or the defendant or the lawyers or  
04:36 10 me. If you look up Bob, he's not yet a Hollywood star,  
04:36 11 but you never know. He may be someday. But if you  
04:36 12 want to do research, knock yourselves out.

04:36 13 Third, if you do use social media,  
04:36 14 whatever that is, you're welcome to. Again, please  
04:37 15 don't discuss your deliberations. Please don't discuss  
04:37 16 anything that was confidential. Other than that, it's  
04:37 17 America. You can post anything that you care to.

04:37 18 So I have one final request, which is I  
04:37 19 like to thank the jurors in person after they've  
04:37 20 deliberated, and I'm about to do that with you all if  
04:37 21 you want to stay. If you don't want to stay, if you've  
04:37 22 had all of us you care to have, you can keep going.  
04:37 23 Not wait. But I would certainly like to thank you in  
04:37 24 person.

04:37 25 It will be very brief, but I'd like to

04:37 1 thank you in person for being here. Especially Ms. --  
2 is it Mijares?

3 JUROR: Mijares.

04:37 4 THE COURT: Mijares. Who gets the award  
04:37 5 for traveling the furthest each day, back and forth.

04:37 6 So -- and so if you want to stay, you're  
04:37 7 welcome to stay. If you want to go, you're welcome to  
04:37 8 go. But regardless, thank you on behalf of the lawyers  
04:37 9 and their parties. You are dismissed.

04:37 10 THE BAILIFF: All rise.

04:37 11 (Jury exited the courtroom.)

04:38 12 THE COURT: Thank you. You may be  
04:38 13 seated.

04:38 14 Ladies and gentlemen, thank you. I  
04:38 15 thought the parties did a great job for their clients.  
04:38 16 The lawyers did a great job for their clients  
04:38 17 throughout the week.

04:38 18 We will take up any post trial motions in  
04:38 19 due course, but I want to thank you all for being here.  
04:38 20 I'm glad that they resolved it today and not Monday.

04:38 21 And is there anything we need to take up?

04:38 22 MR. BURESH: Not for defendants, Your  
04:38 23 Honor.

04:38 24 MR. COLLARD: Not for the plaintiffs.

04:38 25 THE COURT: Thank you for being here. I

04:38 1 hope your clients have a safe trip home. And I'm not  
04:39 2 sure where plaintiff lives. I hope he has a safe trip  
04:39 3 home as well.

04:39 4 So have a good weekend.

04:39 5 (Hearing adjourned.)

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1 UNITED STATES DISTRICT COURT )

2 WESTERN DISTRICT OF TEXAS )

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5 I, Kristie M. Davis, Official Court  
6 Reporter for the United States District Court, Western  
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12 Judicial Conference of the United States.

13 Certified to by me this 7th day of April  
14 2024.

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